IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.752 OF 2006

Dr. Shwetank Jain ..Petitioner.

Vs.

Registrar of Companies
Maharashtra, Mumbai ..Respondent.

...

Mr. A.D. Shetty for the Petitioner.

CORAM: **DR. D.Y. CHANDRACHUD, J.**

23rd March, 2007.

P.C. :

1. The Company Petition has been instituted under the provisions of sub section (6) of Section 560 of the Companies Act, 1956. The company was initially registered on 14th August, 1985 and obtained a certificate of commencement of business. The main object underlying the incorporation of the company was the carrying on of the business of ship repair and ship building. The company had an authorized share capital of Rs.25 lacs and had an issued and subscribed share capital of Rs.8.04 lacs. The first balance sheet was filed by the company for the period ending 30th June, 1986. It has been stated that from 1986 onwards, the company became defunct. On 13th June, 1989 the company is

stated to have purchased land admeasuring 173 Acres in the District of Ratnagiri through registered documents. Again from 1989, the company ceased to carry on any business. A resolution was passed at the meeting of the Board of Directors held on 27th March, 2004 for striking of the name of the company from the register of companies. An application was accordingly made to the Registrar of Companies on 31st March, 2004. The name of the company was struck off the register and this was published in the gazette of India dated 13th May, 2006. At that stage, it has been averred that the company had no liabilities.

2. In paragraph 9 of the Petition it has been averred that in March 2006 the Central Government embarked upon a policy of encouraging the development of smaller ports to encourage the shipping industry. In the circumstances, the ex-directors of the company have decided to restart the business, taking advantage of the large tract of land which had been purchased in the District of Ratnagiri. The Petitioner approached the Respondent on 22nd July, 2006 for the restoration of the name on the register. The application was, however, dismissed on 8th August, 2006 on the ground that the striking off of the name of the company had already

been published in the official gazette.

3. It has been stated in the Company Petition that the land which is available to the company is well situated to carry on the business with which the company was originally formed. It has been stated that the company has no liabilities and there are no creditors. It has also been averred that all the statutory obligations have been complied with.

4. Section 560(6) of the Companies Act empowers the Court inter alia to direct the restoration of the name of a company (where the name of the company has earlier been struck off) where inter alia the Court was of the view that it is otherwise just that the company be restored to the register. Counsel appearing for the Respondent states that the Respondent has no serious objection to the restoration of the name of the company to the register but, at the same time the company must be directed to ensure that it meets all the statutory obligations including those on account of tax.

5. In these circumstances, having regard to the averments

contained in the Petition, there is no reason why an opportunity should not be granted to the promoters of the company to revive the business and in order to effectuate the purpose, to obtain an order for the restoration of the name to the register. The Petitioner, however, undertakes to the Court that all statutory and other liabilities from the inception shall be duly met and fulfilled. The Petitioner shall within a period of four weeks from today place in the form of an affidavit necessary information in that regard before the Respondent with a certificate of the Chartered Accountant. Conditional on the Petitioner doing so and subject to the due compliance with all the requisite formalities under the applicable law including regulations, the First Respondent shall reconsider the application filed by the Petitioner afresh. In order to facilitate the reconsideration of its application, the order dated 8th August, 2006 is set aside. The Company Petition is accordingly disposed of.